

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying reinstatement of oil and gas lease W 69372.

Affirmed.

1. Oil and Gas Leases: Termination--Oil and Gas Leases: Reinstatement

A lease terminated automatically for untimely payment of annual rental may be reinstated only upon proof that reasonable diligence was exercised, or that the failure to make timely payment was "justifiable." In the absence of such proof, a petition for reinstatement is properly denied.

2. Oil and Gas Lease: Termination--Oil and Gas Leases: Reinstatement

Reasonable diligence ordinarily requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. The postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at an earlier date.

APPEARANCES: Eleanor V. Broda, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Eleanor V. Broda appeals from a January 13, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying her petition for reinstatement of oil and gas lease W 69372, which terminated by operation of law when she failed to submit her rental payment on time.

Effective November 1, 1979, noncompetitive oil and gas lease W 69372 was issued to the appellant for 1,319.82 acres situated in Johnson County, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1976). The annual rental payment was due on or before November 1 of each year. The envelope containing the annual rental payment was postmarked in Gillette, New Jersey, on November 3, 1982, a.m., and

received by BLM on November 8, 1982. By notice dated November 12, 1982, BLM informed appellant that lease W 69372 had terminated by operation of law for failure to pay timely the annual rental. In her petition for reinstatement filed November 29, 1982, appellant states that the check was written in a diligent manner on October 25, 1982, which allowed enough time to reach the BLM office before the due date, and that she cannot explain why it was received November 9, unless it was held up somewhere in transit. <sup>1/</sup> By notice dated December 2, 1982, BLM requested further evidence. Appellant responded stating that she was unable to obtain a postmaster's statement, which would explain the delay.

On appeal appellant again asserts that the check was written on October 25 and that she is still unable to get a statement from the postmaster indicating any mishandling of the letter by the Post Office. Appellant further states that the only answer offered by the Post Office was that the letter could have gotten hung up in the collection box.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date of the lease results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior may reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and upon proof that such failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In absence of such proof, a petition for reinstatement is properly denied. Margaret Lee Pirtle, 54 IBLA 113 (1981).

[2] The showing of reasonable diligence necessary for reinstatement ordinarily requires mailing payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). While the appellant does not actually state when the payment was mailed, she infers that the payment was mailed in advance of the date postmarked on the envelope. However, the Board has held that the postmark date of a rental payment is generally considered the date of mailing, unless there is satisfactory corroborating evidence to support the lessee's assertion that the mailing occurred at a date earlier than that indicated by the postmark. Daniel Ashley Jinks, 36 IBLA 268 (1978); David R. Smith, 33 IBLA 63, 66 (1977). An unsupported statement that the letter may have been hung up in the collection box is inadequate.

Accordingly, we conclude that BLM properly rejected appellant's petition for reinstatement. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447 (1983), amended section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. If appellant wishes to avail herself of this provision, she should inquire promptly at the Wyoming State Office.

---

<sup>1/</sup> Although appellant used the "November 9" date in her petition, as noted earlier, the payment was actually received on November 8.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Gail M. Frazier  
Administrative Judge

We concur:

---

James L. Burski  
Administrative Judge

---

C. Randall Grant, Jr.  
Administrative Judge

